

Medico-Legal

USE OF A MEDICAL ASSESSOR

Many county courts have for long followed a practice in workmen's compensation cases by which the medical assessor examines the workman and reports his opinion to the arbitrator (the judge). The House of Lords has now ruled that this practice is wrong.¹

A workman was ruptured at work and received compensation for total incapacity. He underwent an operation, but this was not completely successful. A few years later the employers required him to undergo a further operation. He refused, and they applied to the county court for a review or termination of the weekly payments on the grounds that his refusal was unreasonable. Sir Gerald Hurst, K.C., the arbitrator, was assisted by Dr. W. A. Brend as medical assessor. The employers called three doctors, who said that the operation was advisable and could be successful. The workman called two other doctors, who said the operation would be positively injurious to the man's nervous condition, and that his previous operation had left him with a neurosis. The arbitrator said that the medical assessor would like to examine the workman. This examination took place in private out of court, and when the hearing was resumed the arbitrator intimated that the medical assessor's view was in favour of the proposed operation. After further argument from counsel he gave judgment for the firm, saying that he thought he was entitled to rely upon the advice of the medical assessor, who took the view that the operation would have no effect upon the workman's (nervous) condition. It was not dangerous, and he held the workman's refusal to have been unreasonable. He accordingly ordered that all payments should be suspended. The workman appealed unsuccessfully to the Court of Appeal and then to the House of Lords. The Lord Chancellor, Viscount Simon, pointed out that, as was held by their lordships recently,² the question of reasonableness is not to be determined by considering whether the best medical opinion would think the operation advisable or safe, but whether the workman, having regard to all the circumstances, including the advice of his own doctor, was unreasonable in refusing it. In other words, the court must consider the mind of the workman rather than the medical facts. The House, however, had another and wholly distinct reason for allowing the workman's appeal: that the arbitrator had wrongly allowed himself to be influenced by the medical assessor's advice. An arbitrator may submit to a medical referee for report any matter which arises in the arbitration, but whenever a referee examines a workman he must make a written report or certificate which is available to both parties. A medical assessor, said the Lord Chancellor, is one of the panel of medical referees, but that does not oblige the workman to submit himself for examination, and cannot constitute the assessor an unsworn witness who cannot be cross-examined and whose testimony need not be fully stated to the parties. The assessor is an expert whom the arbitrator may consult on the effect and meaning of technical evidence; he may in proper cases suggest to the arbitrator questions to put to an expert witness, and the arbitrator may ask him what inferences may properly be drawn from proved facts, or the extent of the difference between apparently contradictory conclusions of experts. Their lordships have now ruled that it is not part of his functions to conduct a personal examination of the workman, or to report to the arbitrator the effect of the examination and his deductions from it. The Lord Chancellor added that the arbitrator may, when faced with a conflict of medical evidence, submit the medical issue to the assessor as a referee, but then the report will be in writing and available to the parties. The medical referee is not, of course, exposed to cross-examination.

CONSCIENTIOUS OBJECTION BY A HOMOEOPATH

The High Court dealt in January with an unusual appeal³: by a practitioner of homoeopathy against an order to serve as a junior medical officer, on the ground that he had a conscientious objection to giving "allopathic" treatment. Dr. Arthur George Davies of Cardiff was directed by a national service officer under Defence Regulation 58A to perform services in the United Kingdom as a junior medical officer at the Park Hospital, Wellingborough, for a period of six months. He failed to comply with the direction and was prosecuted before the stipendiary magistrate. At the hearing it was proved or admitted that he had a conscientious objection to giving "allopathic" treatment and that he would be required to do so. He was convicted of a breach of the regulations and fined £5 and £10 costs. He appealed, and the magistrate stated a case for the Divisional Court. Dr. Davies contended there that the

national service officer had not acted in good faith in directing him to perform services which the officer knew that he had a conscientious objection to giving, he having expressed his readiness to perform medical services on homoeopathic lines; he also pleaded that, being a homoeopath, he was incapable of performing the services he was directed to perform. The Ministry contended that the officer had acted in good faith and that a conscientious objection by the doctor was not a relevant matter of defence.

Mr. Justice Humphreys, giving the judgment of the court, said that while he had every sympathy for anyone called on to do anything that was in direct conflict with his convictions and beliefs, the decision of the magistrate was right. The court had to decide whether the officer's direction was lawfully given, and was bound to approach the case on the basis that he was a fair-minded person. It was for the officer to make up his mind whether a person called on to perform certain duties was "capable of performing" them. In the court's opinion the direction complained of was properly given and the doctor was a person capable of performing the duties required of him. His appeal was therefore dismissed.

By Regulation 58A any national service officer may direct any person in Great Britain to perform such services as may be specified by or described in the direction, being services which that person is, in the opinion of the officer, capable of performing. There is no appeal against a direction given by the officer, and conscientious objection is only recognized in connexion with service in the armed Forces. Dr. Davies's case was therefore not contemplated by those who framed the regulation. A question that comes to mind is: What have other homoeopathic practitioners done in similar circumstances? Without knowing the facts it is hardly proper to comment on the case.

The Services

Capt. P. A. Forsyth, R.A.M.C., repatriated prisoner of war, has been mentioned in dispatches in recognition of gallant and distinguished services in the field before his capture.

The *London Gazette* has announced the appointment as M.B.E. (Military Division) of Capt. (temp. Major) W. E. Tucker and Capt. A. D. Aveling, R.A.M.C., repatriated prisoners of war, in recognition of gallant and distinguished services during and before captivity; and also of Temp. Surg. Lieut. J. H. L. Ferguson, R.N.V.R., for gallantry and great skill in rescuing and caring for wounded survivors from H.M.S. *Cromarty*.

CASUALTIES IN THE MEDICAL SERVICES

Previously reported missing at sea, now presumed to have lost his life.—Lieut. R. A. Palmer, R.A.M.C.

Missing, presumed killed.—Temp. Surg. Lieut. P. G. Jeffries, R.N.V.R.

Wounded.—Temp. Surg. Lieut. J. C. Bulstrode, R.N.V.R.

DEATHS IN THE SERVICES

Col. CHARLES EDWARD HARRISON, C.M.G., C.V.O., A.M.S., died on Jan. 25 at Redhill while in his 92nd year. He was the son of John Harrison, who was born in July, 1787, so the two lives span the remarkably long period of 157 years. The father, John Harrison, was appointed assistant surgeon to the First Foot Guards in 1809 and served during that year in the ill-fated Walcheren Expedition, and subsequently in the Peninsular War in 1811-13, in Holland in 1814, and at the Battle of Waterloo in 1815. In 1824 he was battalion surgeon, Grenadier Guards, and only retired in 1840. His distinguished son, Col. Charles Edward Harrison, was born in 1852 and was educated at Wellington College and St. Bartholomew's Hospital; he passed the London M.B. with honours in 1876 and took the F.R.C.S.Eng. in 1878, having first qualified as M.R.C.S. and L.S.A. in 1874. He entered the Army in the same year as surgeon to the Grenadier Guards, like his father just fifty years earlier. He rose to be surgeon-major in the same famous corps in 1885, was promoted to the now long-extinct rank of brigadier surgeon lieutenant-colonel, Brigade of Foot Guards, in 1891, and to brevet colonel in 1907. In the year of his retirement, 1909, he was awarded the C.V.O. His war service included the Battle of Tel-el-Kebir in Egypt in 1882 (medal with clasp and star) and a period in France during the last war in 1914-15, when, in addition to medals, he was given the C.M.G. During his long service he also held the important posts of charge of the Queen Alexandra Military Hospital, the 1st London General Hospital, and was Assistant Director of Medical Services; he was appointed Hon. Surgeon to King Edward VII. His energies after his retirement from active service included command of a convalescent hospital in 1916, work in the Ministry

¹ Richardson v. Redpath Brown and Co., Ltd., (1944) 1 All E.R., 110.

² Steele v. Robert George and Co., (1942) A.C., 497.

³ Times, Jan. 13, 1944.

of National Service in 1918, and in the Territorial Force Reserve in 1918-23. It will be long before the Army medical record of himself and his father is equalled. The funeral took place on Jan. 28 at Redhill with full military honours. Major-Gen. O. W. McSheehy represented the Director-General, Army Medical Services, and the Grenadier Guards sent an unarmed escort of pall-bearers with buglers who sounded the Reveille and Last Post.

Medical Notes in Parliament

Consultant and Specialist Services

SIR DOUGLAS HACKING inquired on Feb. 3 whether the Minister of Health had considered the letter about consultant and specialist services appearing in the *British Medical Journal* and the *Lancet* of Jan. 15, signed by the Presidents of the three Royal Colleges, which stated that these colleges were at his request making a survey of the present availability of consultants and specialists. Mr. WILLINK said he had considered this letter. Surveys of the hospital services had been in progress throughout the country for some months. Their aim was to assist in producing plans for the co-ordination of those services after the war by ascertaining the supply of and probable demand for hospital facilities, and by making recommendations for any necessary extensions and improvements. At an early stage of these inquiries it became clear that a useful purpose would be served by the initiation of similar inquiries in England and Wales into the supply and distribution of consultants and specialists and the probable demand for them in a comprehensive post-war hospital and consultant service. Arrangements were accordingly made with the Presidents of the three Royal Colleges for a survey to be made of the existing consultant and specialist services to ascertain whether there was a surplus or shortage in any area and whether redistribution would be desirable in any post-war hospital service. The Royal Colleges had established a Central Medical Academic Council, including representatives of the universities, to perform the necessary work at the centre, and area committees based on the universities to undertake the collection of information and preparation of lists locally. Mr. Brown had invited the vice-chancellors of the universities to act as chairmen of these area committees. It was hoped that this survey would make available for the first time information about the numbers and types of consultants and specialists in the country. Information was already to hand about specialists in the Services. Misunderstanding appeared to have arisen owing to the fact that to arrive at the numbers and types of consultants and specialists it was necessary to draw up lists of names. Mr. Willink said he was glad of the opportunity to assure the profession, and especially its members on war service at home or abroad, that such lists would be treated as strictly confidential. They would not be used as a test for eligibility for appointment as consultant or specialist in any comprehensive post-war hospital service. If, at a later date, it was thought desirable that consultant and specialist appointments should be restricted to persons qualified in some particular manner and enrolled in a list for the purpose, it would be necessary to provide for the establishment of a register on a statutory basis in a manner approved by Parliament.

Post-war Housing

A debate on post-war housing took place in the House of Lords on Feb. 8 on a question by Lord ADDISON to the Minister of Works. Lord Addison asked what steps the Government was taking to meet requirements in regard to plans, designs, and costs and to alternative methods and materials.

Lord PORTAL said that on all housing matters he was working in complete accord with the Minister of Health, whose Department dealt with the local authorities, and also with the Secretary of State for Scotland. The Ministry of Reconstruction and the whole Government were alive to the vital necessity for getting on with the question of housing at the right moment, for it was largely a matter of timing in view of the fact that the war effort was still demanding nearly all the available labour and materials in the country. The limit of expenditure on repairs to war-damaged and other houses was recently raised from £100 to £500. Privately owned houses would participate in this, and the instructions to licensing officers had been adjusted accordingly. Local authorities should be able to secure the carrying out of the great proportion of these repairs, and the back of them should be broken by the end of the year. If that could be done, an awkward job would be out of the way. The Government had decided that in the late spring and early summer arrangements would be made for the use by local authorities of plant and machinery, as these

became available from airfield construction, for the preparation of housing sites sufficient for the maximum number of houses that could be built during the first two years after the war. Sites would be settled and approved between the local authorities and the Minister of Health. The Ministry of Works was putting up a number of houses to demonstrate the use of different materials in permanent house construction, and to ascertain the costs. The question of the suitability of the houses rested with the Ministry of Health. Experiments were being made in the conversion of wartime hostels into temporary houses. The Government had gone a considerable way in getting out plans for a type of temporary prefabricated house. In considering prefabrication on a large scale, the questions of materials and the capacity available for their manufacture were vital if it was to be started before the war was over. The first prototype (made by hand) would be ready at the end of April, when it would be shown to the Minister of Health, the Secretary of State for Scotland, and others interested in the matter. To avoid these temporary houses remaining in existence as they did after the last war, the Government had decided that, if approved, they should be publicly owned and licensed for a period. The Ministry of Works was also exploring with certain local authorities the extent to which it would be economic and practicable to convert large houses in urban districts into comfortable flats. One of the most effective ways of securing efficiency and economy in houses would be by far greater standardization of essential parts than hitherto: already a degree of success in standardization had been achieved. For instance, the various sizes of metal windows had been reduced by about 80% to three basic types which could be produced in 50 varieties. The types of baths had been reduced from 40 to 5, and water heaters, tanks, and cisterns from 270 to 100. Other items were also being dealt with along these lines. They would try to give the people houses to live in at rents which they could afford to pay. Steps were being taken to ensure the supply of all materials required for post-war building. The report of the Mission which went to America was issued on Feb. 7, and would be of great value. The report of Sir George Burt's interdepartmental committee would, he hoped, be published next month. With regard to the post-war work, the Ministry was fully alive to what the ex-Service man wanted, and it would not be the fault of the various Departments concerned if they did not give him what he required.

School Meals in Scotland.—On Jan. 18 Mr. JOHNSTON informed Mr. Thomas Henderson that for October, 1943, the number of children receiving meals (dinners or lunches) in schools in Scotland was 159,364, representing 21.2% of the number on the rolls, compared with 141,630, or 18.8%, in June, 1943. The number receiving milk was 513,502, representing 67.6% of the numbers on the rolls, compared with 520,124, or 68.5%, in June, 1943.

Infant Mortality in Scotland.—On Feb. 8 Mr. JOHNSTON informed Mr. T. Henderson that the five counties and large burghs respectively in Scotland with the highest death rates among children between one and 12 months in 1941 were: counties: Selkirk, Ayr, Kincardine, Dunbarton, and Caithness; large burghs: Port Glasgow, Dunbarton, Coatbridge, Glasgow, and Hamilton.

Calcium in Bread.—On Feb. 8 Sir E. GRAHAM-LITTLE asked the Minister of Food whether, in view of the recent demonstration, details of which had been submitted to him, before a scientific society that the added calcium was due to a misconception, if, as the increased consumption of calcium salts raised the blood pressure from which condition every fourth person of late middle age died, he would institute an inquiry on the subject independent of the Medical Research Council, and, until the findings of this inquiry were available, stop addition of calcium to bread. Col. LEWELLEN said he was not aware of the demonstration to which Sir E. Graham-Little referred. He was advised on the best authority that the small amount of calcium now added to bread was beneficial for the continued good health of the nation and had not the effects which the question would seem to imply. The answer to the second part of the question was "No, sir."

Notes in Brief

The Disabled Persons (Employment) Bill, which has passed the House of Commons, was read a first time in the House of Lords on Feb. 8.

Universities and Colleges

UNIVERSITY OF CAMBRIDGE

At a Congregation held on Feb. 5 the degrees of M.B., B.Chir. were conferred by proxy upon J. W. Evans, M. P. Durham, L. L. Bromley, B. W. Rhodes.

During the month of January titles of the degrees of M.B., B.Chir. were conferred on M. K. E. Reaney of Girton College.